

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

| | | |
|----------------------------------|---|---------------------|
| RSI HOME PRODUCTS, INC., |) | |
| RSI HOME PRODUCTS MANAGE- |) | |
| MENT, INC., and RSI HOME PRODUCT |) | |
| SALES, INC. |) | |
| |) | |
| Plaintiffs, |) | |
| v. |) | C.A. No. 05-722-GMS |
| |) | |
| TAN U.S. GROUP, INC., |) | |
| |) | |
| Defendant. |) | |

**DEFENDANT'S MOTION TO DISMISS COUNTS III & IV OF
PLAINTIFFS' FIRST AMENDED COMPLAINT**

Defendant Tan U.S. Group, Inc. ("Tan U.S.") moves, pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure, for an order dismissing counts III and IV of Plaintiffs' First Amended Complaint. The bases of defendant's motion are fully set forth in Tan U.S.'s Opening Brief in support of its motion and are summarized below, as follows:

1. On February 23, 2006, Plaintiff filed Plaintiffs' First Amended Complaint, alleging Patent Infringement (Count I), Willful Infringement (Count II), Tortious Interference with Business Relations (Count III), and Deceptive Trade Practices (Count IV). Counts III and IV were not alleged in Plaintiffs' original complaint.
2. Counts III and IV attempt to restate Plaintiffs' patent infringement claims in state law terms. Because these claims are based entirely on conduct governed by federal patent law they are preempted and should be dismissed.

3. Plaintiffs' deceptive trade practice claim is subject to the heightened pleading requirements of Rule 9(b) of the Federal Rules of Civil Procedure. Count IV has not been pled with the specificity required by Rule 9(b), and should be dismissed.

4. Additionally, Plaintiffs' deceptive trade practice claim fails under the law of either of the states whose law might apply to this case, and should be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Specifically, this claim fails because, (1) the Plaintiffs are not "consumers," and consequently lack standing to bring suit under the Texas Deceptive Trade Practices-Consumer Protection Act; or (2) Plaintiffs seek only monetary damages, and this relief is not available under the Georgia Uniform Deceptive Trade Practices Act.

WHEREFORE, for these reasons, and as more fully set forth in Defendant's Opening Brief in Support of Motion to Dismiss Counts III & IV of Plaintiffs' First Amended Complaint, Defendant Tan U.S. respectfully requests that the Court dismiss the Complaint with prejudice and grant such other and further relief as the Court deems appropriate.



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Dated: March 27, 2006

CERTIFICATE OF SERVICE

I, Dawn M. Jones, Esquire, hereby certify that on March 27, 2006, I caused to be electronically filed a true and correct copy of the foregoing document with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record:

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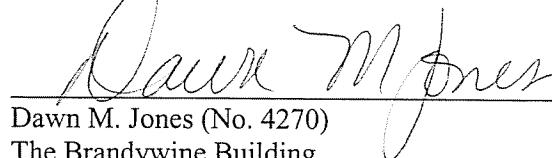
I further certify that on March 27, 2006, I caused a copy of the foregoing document to be served by hand delivery on the above-listed counsel of record and on the following non-registered participants in the manner indicated:

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